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No. 91-935

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

CLAYTON EUGENE DEFRIES; CLYDE E. DODSON;
CLAUDE W. DAULLEY; R. F. SCHAMANN;
KARL LANDGREBE; DONALD MASINGO,
Petitioners,

v.

LICENSED DIVISION, DISTRICT NO 1—
MEBA/NMU, AFL-CIO,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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REPLY BRIEF FOR PETITIONERS

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Respondent's contention that the Court of Appeals did not reach the question presented by the Petition is specious. The question presented is *not* "whether the trust agreements vested the trustees with discretion to decide the identity of the entity empowered to appoint union trustees" (Br. in Opp. 7). It is true that the Court of Appeals did not decide *that* question, but assumed an affirmative answer and then went on to decide specifically the question that the Petition *does* present: whether trustees given such discretion over interpretation of their trust agreements lose it—in favor of *de novo* judicial interpretation—as to matters concerning which some of

them are found to have a conflict of interest. Thus, the Court of Appeals expressly held as follows:

> Here, given the palpable interest that would be involved, we believe our review of such a "discretionary" ruling would effectively be what we apply here [in the] first instance to the interpretive question—plenary review. [Pet. App. 10a-11a. n.*.]

It is true that the Court of Appeals deemed its holding consistent with the reasoning of *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101 (1989). The question presented is whether that was correct, or whether agreement-conferred trustee discretion extends to questions of interpretation such as that involved here, as well as to benefit determinations such as were involved in *Bruch*.

The remainder of the Brief in Opposition is essentially devoted to premature argument of the merits. At this stage, we merely note two errors in that argument. The rules of the law of trusts cited at Br. in Opp. pp. 9-11 are inapposite because they relate to situations, unlike that here, where the trust agreement does not provide a procedure for selection of successor trustees. There is no basis for Respondent's denial (contrary to the Court of Appeals' assumption) that the underlying issue below was one of interpretation of the trust agreements. (Br. in Opp. 11-13). Plaintiffs' complaint was premised exclusively on ERISA, which provides federal court jurisdiction only if the claim arises from the trust agreements. 29 U.S.C. § 1132(a)(3). Indeed, the Court of Appeals expressly defined the issue on the merits as

> whether the reference to "the Union" in the trust agreements confers on the Licensed Division, and not the "parent union," District No. 1-MEBA/NMU, the power to appoint trustees. [Pet. App. 11a.]

To be sure, certain other agreements and the surrounding facts are relevant to this issue, but that does not make

the issue any less one of interpretation of the trust agreements. Those agreements expressly provide that

> The Trustees shall have complete authority, in their sole and absolute discretion, to interpret the terms of the Trust * * *. All such interpretations and determinations of the Trustees shall be final and binding upon all parties and persons affected thereby. [A. 28.]

The question squarely presented by the Petition is whether *Bruch*'s holding—that such a grant of discretion in an ERISA benefit plan cannot be abrogated on grounds of conflict of interest—applies to trust interpretations as well as to benefit determinations. That question is one of general importance.

For these reasons, as well as those set forth in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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